IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4009 OF 2006

Maharashtra Public Service Commission, having his office at 4th floor, Bank of India Building, Fort, Mumbai - 400001. Through Chairman/Secretary. .. Petitioner

Versus

1. Shri Shelke Sunil Narayan, age 52 Police Constable attached to Joint Commissioner of Police Pune Residential address 1867, Sadashiv Peth, Near Deshmukhwadi, Pune-30.

2. The State of Maharashtra, through the Principal Secretary, Home Department, Mantralaya, Mumbai - 400 032.

3. The Commissioner of Police, Brihan Mumbai, having office at L.T. Marg, Opp. Crawford Market, Mumbai - 400 001. .. Respondents

ALONGWITH

WRIT PETITION NO. 4010 OF 2006

Maharashtra Public Service Commission, having his office at 4th floor, Bank of India Building, Fort, Mumbai - 400001. Through Chairman/Secretary. .. Petitioner

Versus

1. Shri Vilas Harishchandra Sawant, Police Naik attached to Meghwadi Police Station, Near Aayakar Vasahat -I, Jogeshwari (E), Mumbai - 400050 Residential Address: Vishwanath Chawl, Gandhi Nagar, "E" Ward, Opp. Raja Masala Lane, Jogeshwari (E), Mumbai - 400 060.

2. The State of Maharashtra, through the Principal Secretary,

Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4011 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Shelke Uttam Maruti,]
Police Constable attached to Addl.]
Commissioner of Police, West Zone,]
Mumbai.]
Residential Address:]
8/Snehsadan Chawl, Chimatpada, Marol]
Naka, Andheri (E), Mumbai-400 059.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4012 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Ubale Hanumant Pandurang, 51 yr]

Police Constable attached to Crime]
Branch, Navi Mumbai, Dist: Thane-708]
Residential Address:]
Room No.G/141-142, First Floor,]
Sector 3, Airoli, Navi Mumbai,]
Dist: Thane - 400 708.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4013 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Avhad Gopal Balmukh, age 51 yrs]
Police Constable attached to Meera]
Road Police Station, Meera Road,]
District Thane, Thane.]
Residential Address:]
Penkar Pada, Room No.2, Patil Niwas,]
Meera Road, Dist. Thane.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4014 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Jadhav Bhanudas Baburao, 55 yrs]
Police Constable attached to]
Superintendent of Police, Satara]
Residential Address:]
AT Post - Nigadi Tarf, Tal. Satara,]
Dist. Satara - 415001.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4015 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Patel Nazir Kadar, age 30 yrs.,]
Police Constable attached to]
Joint Commisioner of Police, Pune]
Residential Address:]
Bhawanipeth Police Line, R.No.38,]
Opp.Padamji Park, Pune - 411002.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]

L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4016 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri More Arvind Shahu,]
Police Constable attached to Addl.]
Commissioner of Police, West Zone,]
Mumbai.]
Residential Address:]
8-B/44, Ashtvinayak Co.op.Hsg.Soc.,]
P.M.G.P. Colony, Mahakali Road,]
Andheri (E), Mumbai - 400 093.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 4017 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Salunkhe Prakash Sampat,]
Police Constable attached to Joint]
Commissioner of Police, Pune.]
Residential Address:]
Swargate Police Line, Bldg. No.5,]

R.No.352, Pune - 411 042.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 5934 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Sanjay Vishwanath Dahiwal,]
Age: 43 years, r/o.A/7, Roopchand]
Apt., Behind Kapurbawadi Police]
Station, Thane (W) - 400 601.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 5939 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Sahebrao Babanrao Sonawane,]
Age: 39 years, Occ:Service, Police]
Constable attached to Nigdi Police]
Station, Nigdi, Pune-411 035.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 5940 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Sanjaykumar Dnyandeo Kamble,]
Age: 44 years, Occ:Service, Police]
Constable attached to Police Head]
Quarter Solapur (Rural), Solapur.]

2. The State of Maharashtra,]
through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]

3. The Commissioner of Police,]
Brihan Mumbai, having office at]
L.T. Marg, Opp. Crawford Market,]
Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 5957 OF 2006

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Chavan Rajan Shivram, age 47]
   Police Constable attached to]
   Superintendent of Police, Kolhapur]
   Residential Address:]
   At Post Hatkanangle, Tal.Hatgkanagle]
   Dist. Kolhapur - 416109.]

2. The State of Maharashtra,]
   through the Principal Secretary,]
   Home Department, Mantralaya,]
   Mumbai - 400 032.]

3. The Commissioner of Police,]
   Brihan Mumbai, having office at]
   L.T. Marg, Opp. Crawford Market,]
   Mumbai - 400 001.] .. Respondents

ALONGWITH

WRIT PETITION NO. 790 OF 2007

Maharashtra Public Service Commission,]
having his office at 4th floor, Bank of]
India Building, Fort, Mumbai - 400001.]
Through Chairman/Secretary.] .. Petitioner

Versus

1. Shri Kadam Sunil Jagannath, age 51]
   Police Constable attached to]
   Residential Address:]
   At Post Dharana Camp, Post: Taloja,]
   Tal. Panvel, Dist. Raigad.]

2. The State of Maharashtra,]
   through the Principal Secretary,]
   Home Department, Mantralaya,]
   Mumbai - 400 032.]

3. The Commissioner of Police,]
   Brihan Mumbai, having office at]
   L.T. Marg, Opp. Crawford Market,]
   Mumbai - 400 001.] .. Respondents

Mr. Pratap Patil for the petitioners.

Mr. A.P. Vanarase for the respondent No.1 in all the Petitions.

Mr. S.R. Nargolkar, AGP, for the respondents Nos.2 and 3 in all the Petitions.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 19TH APRIL, 2007

ORAL JUDGMENT. : [Per S.B. Mhase, J.]

. All these Petitions have been filed by the Maharashtra Public Service Commission (for short "MPSC") challenging the common order passed in Original Application Nos.487, 488, 511, 636, 637, 639, 713, 744, 745, 969 and 487 of 2004 on 17th June, 2005. Each of these Original Application was filed by the respective respondent-Police Constable before the Maharashtra Administrative Tribunal.

2. The controversy involved in these matters is pertaining to 25% posts of Police Sub Inspectors to be recruited with the State of Maharashtra as per the Police Sub-Inspector (Recruitment) Rules, 1995. In order to get recruited to the said 25% posts of Police Sub Inspectors, the Public Service Commission is expected to hold a limited departmental examination.

The Police Constable who possesses qualification of S.S.C. and minimum period of six years regular service, but has not crossed 35 years of age being an open candidate and 40 years of age being a backward class candidate, is eligible to appear for this limited examination. With this maximum eligibility period of age, he can have three chances to appear for the limited departmental examination. In case of candidates who are possessed of educational qualification of H.S.C. and Graduation, they were expected to have a minimum period of five years and four years regular service respectively. It appears that because of administrative reasons and non availability of posts and for want of requisition from the Government, the limited examination as provided in the Rules were not conducted by the MPSC-petitioner. Therefore, the Police Sub Inspectors (Recruitment) (Second Amendment) Rules, 1996 were introduced on 24th December, 1996 and in Rule No.3, the proviso was added which was to the following effect: *"Provided further that the candidates who were eligible to appear for the limited departmental examination as on 1st January 1991, but could not appear as the said examination was not conducted since 1st January 1991; and as such, have been deprived of the opportunity on account of the age limit, shall be given three chances to appear for three consecutive examinations to be held*

from 1997 onwards." It appears that no examinations were conducted thereafter till the year 2003. In the examinations to be conducted in the year 2003, all the respondents who are the applicants in the above referred Original Applications have preferred an application. We may mention at this stage itself that 3000 others who were similarly situated like that of the applicants in the Original Applications and who were also age barred were also applicants alongwith the present respondents. It appears that in the scrutiny which was carried out at the level of Director General of Police before forwarding the applications to the MPSC viz. the petitioners, applications of 3000 candidates were not forwarded as they were all age-barred. The respondents' applications were forwarded and they appeared for the limited departmental examination. However, the MPSC, by way of abundant precaution, verified and scrutinized the applications which were forwarded to the MPSC and found that the applicants in the Original Applications who are the respondents before us, were not qualified being age-barred candidates. The MPSC noted that these respondents have become eligible to appear for the limited examination after 1st January, 1991 and, therefore, the benefit of the proviso which was added in 1996 referred to above cannot be extended to these candidates. Therefore, the MPSC informed the present

respondents - applicants in the Original Applications that they were ineligible for appearing in the limited departmental examinations and, therefore, they will not be allowed to take part in the further selection process.

3. Being aggrieved by this decision of the MPSC, the respondents in each of these Petitions approached the Maharashtra Administrative Tribunal by filing the above Original Applications. The Maharashtra Administrative Tribunal has considered the cases of these respondents, but has relied upon the subsequent amendment which was effected in the Police Sub Inspector (Recruitment) Rules of 1995. Pending these Original Applications, the amendment was effected in 2005 which added the further proviso as follows: *"Provided also that the candidates who were eligible for the limited departmental examination after 1st January 1991, but who were not allowed to appear for the limited departmental examinations held in 1998 and 2002 on account of the age limit, shall be given three chances to appear for the next consecutive examinations."*. All the applicants in the Original Applications fall under this category viz. they have become eligible to appear for the limited examination after 1st January, 1991, but could not appear in the 1998 and 2002 examinations because they

were age-barred. Having said this, none of the respondents have satisfied this Court and/or the Maharashtra Administrative Tribunal that when in 2003 the examinations were conducted by the MPSC, any one of them was qualified on the ground of age viz. he was within the age limit and, therefore, after scrutiny of the facts and even otherwise on inference, we find that all the applicants in the Original Applications were age-barred in the year 1998 and 2002 even though they were otherwise qualified for appearing in the said examination after 1st January, 1991. Therefore, on a proper analysis of both the provisos we find that in 2003 examinations the applicants in the Original Applications could not appear for the limited examinations in view of the 1996 amended Rule which is referred to above because at that time, they were not qualified. They became qualified after 1st January, 1991. They could not appear in the 1998 and 2002 limited departmental examinations because by that time they were age barred and there was no provision in the Rules to relax the age limit. The said provision was introduced for the first time in 2005 when the Original Applications were pending before The Maharashtra Administrative Tribunal. Therefore, the amendment to the Rules will have to be prospective and the benefit of that proviso which was added in 2005 cannot be extended

in favour of the respondents- applicants in the Original Applications. However, the Maharashtra Administrative Tribunal has erroneously extended the benefit of the said added proviso to the respondent-applicants in the Original Applications and allowed them to undergo further selection process in view of the examinations to be conducted in 2003. This is a gross error on the part of the Maharashtra Administrative Tribunal and, therefore, what we find is that the impugned judgment which has been delivered by Maharashtra Administrative Tribunal suffers from a serious illegality and we, therefore, set it aside. However, we clarify the position viz. that all the applicants in the above referred Original Applications and the similarly situated candidates from the Police Department will be entitled to appear for the limited departmental examination consecutively for three chances on the basis of the proviso which was introduced in 2005 and they will enjoy these chances irrespective of their age limit whenever examinations are conducted by MPSC.

4. The Rule is made absolute in all the Petitions and the Petitions stand disposed of accordingly.

Sd/- Sd/-

[R.S. MOHITE, J.] **[S.B. MHASE, J.]**